

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner
Marshall Johnson
Ken Nickolai
Phyllis A. Reha
Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of the Grand
Rapids Public Utilities Commission to Extend
its Assigned Service Area into the Area
Presently Served by Lake Country Power

ISSUE DATE: October 16, 2003

DOCKET NO. E-243, 106/SA-03-896

ORDER DENYING REQUEST TO
TRANSFER SERVICE TERRITORY AND
NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On June 12, 2003, the Grand Rapids Public Utilities Commission (the City) filed a petition under Minn. Stat. § 216B.44 stating its intention to exercise its right to extend its assigned service area to include two areas within its city limits: a 56-acre area annexed in 1999 and a 362-acre area annexed in 2002. Both areas lie within the assigned service area of Lake Country Power, a rural electric cooperative. The petition asked the Commission to adjust the City's service area boundaries to include these areas and to open a contested case proceeding to determine appropriate compensation to the cooperative for service rights to the areas.

The petition also asked the Commission to transfer to the City a small portion of Lake Country's assigned service area that lies within the neighboring city of La Prairie and to determine appropriate compensation for service rights to that area.

On July 14, 2003, Lake Country filed comments. Lake Country concurred in the request for a contested case proceeding to set compensation for service rights to the two areas annexed by the City, but opposed the request to transfer the area within the city of La Prairie from Lake Country to the City.

On July 14, 2003, the Department of Commerce filed comments recommending that the Commission open a contested case proceeding to set compensation for the two areas annexed by the City. The Department also stated that the City's request to transfer the area within the city of La Prairie from Lake Country to the City did not meet the requirements of Minn. Stat. § 216B.44; the Department did not recommend referring the request for contested case proceedings.

On August 12, 2003, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Commission Action on the Request to Determine Compensation for Service Rights to the Two Annexed Areas

It is clear as a matter of law that Grand Rapids has the right to serve the two annexed areas upon paying appropriate compensation to Lake Country. Minn. Stat. § 216B.44 authorizes municipal utilities to extend their assigned service areas within their city limits as long as they compensate the utilities they displace.

If the municipal utility and the displaced utility cannot agree on compensation, either party may ask the Commission to decide the issue, as the City has. The Commission is to set compensation based on the original cost of affected utility property less depreciation, loss of revenue by the displaced utility, integration expenses, and other appropriate factors.

These factors require evidentiary development, and the Commission will therefore refer the compensation issue to the Office of Administrative Hearings for contested case proceedings. A Notice and Order for Hearing follows this Order's substantive discussion of the second issue, the City's request that the Commission transfer to the City a small portion of Lake Country's assigned service area within the City of La Prairie.

II. Commission Action on the Request to Transfer Service Territory Within the City of La Prairie from Lake Country Power to the Grand Rapids Municipal Utility

A. The City's Claims

While the City has a clear right to acquire service rights to all areas within its city limits, it has also asked the Commission for service rights to a small portion of Lake Country's assigned service area within the La Prairie city limits. The area encompasses approximately 16 homes on Mary Ann Drive.

The City states that it has always served the neighboring city of La Prairie, that the cooperative's assignment to serve Mary Ann Drive is a historical anomaly, and that Mary Ann Drive residents have requested service from the City. The City argues that it could serve Mary Ann Drive more efficiently and economically than the cooperative, since it would not need to run a line over the Mississippi River to serve the area, as the cooperative currently does.

The City also argues that transferring the area to the City would prevent the unnecessary duplication of facilities, since the lines the cooperative uses to serve the area would be replaced instead of duplicated by the City lines that must be built to serve the annexed areas. Finally, the City argues that the small size and self-contained nature of the Mary Ann Drive area weigh in favor of a service transfer, since the transfer would not deprive the cooperative of opportunities for growth.

B. Positions of the Other Parties

Lake Country opposed transferring the Mary Ann Drive area to the City, arguing that such a transfer would cause great uncertainty about the stability of service area boundaries and could prompt a flood of petitions seeking boundary changes.

The Department of Commerce stated that the City did not have a right to acquire the Mary Ann Drive area under Minn. Stat. § 216B.44, but that there might be practical reasons for the cooperative to consider selling the City the service rights to the area. The Department did not recommend referring the request for contested case proceedings.

C. The Legal Standard

In 1974 the Minnesota Legislature determined that the orderly development of economical, statewide electric service required the state to grant electric utilities exclusive service rights within designated service areas:

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

Minn. Stat. § 216B.37.

The Legislature directed the Commission to establish these exclusive service areas by April 12, 1975¹, which the Commission did.

The Commission has the authority to change service area boundaries under Minn. Stat. § 216B.39, subd. 3 and under its general authority to rescind, alter, or amend any of its Orders and to reopen any of its proceedings. Minn. Stat. § 216B.25. The factors to be weighed in considering service area changes are the statutory goals of assigned service areas, set forth above, and the broad public interest.²

D. Commission Action

1. Summary of Commission Action

In this case the City states that it seeks a service area change for four reasons: to correct an anomaly in its boundary with Lake Country, to substitute a more efficient service configuration for the cooperative's existing service line across the Mississippi River, to avoid duplicating the cooperative's facilities when the City installs its own facilities to serve a newly annexed area, and to honor the preferences of those residents of Mary Ann Drive who have requested service from the City instead of the cooperative.

¹ Minn. Stat. § 216B.39, subd. 1.

² *In the Matter of City of White Bear Lake's Request for an Electric Utility Service Area Change Within its City Limits and in the Matter of the Petition of Northern States Power Company for an Electric Utility Service Area Change Within the City of White Bear Lake*, 443 N.W.2d 404 (Minn. App. 1989).

The Commission concludes that these advantages, even if proven by a preponderance of the evidence, would not outweigh the disadvantages of transferring the Mary Ann Drive area from the cooperative to the City. The harm that the transfer would inflict on service area stability – and on the public policy interests that that stability serves – would exceed any incremental advantage in efficiency or customer satisfaction that the transfer might produce.

Similarly, the transfer could potentially prompt a flood of petitions to change the kinds of service area configurations that Mary Ann Drive represents. The resource demands that those petitions would impose on the regulatory agencies, the utilities, and affected customers would not be justified by any marginal improvement in efficiency that tinkering with those service area assignments might bring. These findings are explained more fully below.

2. The Risk of a Flood of Petitions

First, it is important to note that the situation in this case – one utility serving a small “island” of customers surrounded by another utility’s service territory – is not unusual. Nor is it unusual for service area boundaries to have jagged edges or to form “isthmuses” or “peninsulas” that extend into or through other utilities’ service territories. Such service area configurations are pervasive throughout the state, largely because utilities agreed to them when service area boundaries were set.

The legislation that established assigned service areas encouraged utilities to agree on service area boundaries and encouraged the Commission to approve these agreements.³ The utilities often agreed on irregularly shaped boundaries for various reasons – to avoid disrupting existing service arrangements, to permit them to deploy their facilities in the most efficient and cost-effective configuration, to obtain service area concessions from neighboring utilities.

This is not a case, then, involving a service area aberration that can and should be corrected to bring service area boundaries into conformity with statewide standards. It is a case involving a relatively common service area configuration that cannot be adjusted non-consensually without calling into question the integrity of other service area boundaries throughout the state.

The risk that adjusting this boundary would provoke a flood of petitions is real. Even more important, however, the risk that it would undermine service area stability is real. And as explained below, the Commission has long viewed service area stability as central to the goals of the Public Utilities Act.

3. Service Area Stability

The Legislature has determined that exclusive service areas are necessary to encourage the development of coordinated statewide electric service, to eliminate or avoid unnecessary duplication of facilities, and to promote economical, efficient, and adequate electric service to the public.⁴ The Commission has therefore strictly enforced service area boundaries and has found that their long-term stability is essential for the orderly provision of reliable and adequate electric service throughout the state.

³ Minn. Stat. § 216B.39, subd. 4.

⁴ Minn. Stat. § 216B.37.

The generation, transmission, and distribution of electricity is an extremely capital-intensive business. Utilities must be willing and able to commit large amounts of capital to acquiring the infrastructure and contractual arrangements necessary to deliver power throughout their service territories. Since power plants and transmission lines require years of planning and construction, utilities must also be willing to commit these resources years in advance of actual need.⁵ They do this in reliance on carefully drawn long range plans.

Without service area stability, long range planning by utilities would be meaningless. They would have little incentive to commit current resources to meet future need, and the public would have little right to require it. Historically, exclusive service areas have been the *quid pro quo* for utilities' obligations to build, buy, or lease the capacity necessary to serve all comers. That is why the Legislature considered exclusive service areas essential to the development of economical, efficient, and adequate electric service throughout the state.

This is not to say, of course, that service area stability is an end in itself; it is merely a means of achieving the statewide coordinated electric service sought by the Legislature. Since service area stability is crucial to achieving that goal, however, it is important that assigned service areas not be changed except when the broad public interest requires it.

4. Broad Public Interest Not Implicated

Of course, service area boundaries are not immutable, and the Commission has the authority and the responsibility to ensure that service area assignments continue to serve the broad public interest. Service area boundaries that pervasively or substantially fail to serve the public interest and to further the goals articulated at Minn. Stat. § 216B.39 must be changed. Here, however, the City's reasons for requesting the change do not rise to that level.

The argument that the "island" service configuration is anomalous carries little weight, since such configurations are common throughout the state.

The argument that the City could serve Mary Ann Drive more efficiently – even assuming that the City could prove this by a preponderance of the evidence – founders on the fact that all service area assignments include some customers who could arguably be served more efficiently by a neighboring provider. This is inevitable as populations shift and utility systems shift with them. It is only when these shifts result in a substantial mismatch between an area's service needs and its provider's capacity that the broad public interest is implicated.

Similarly, the argument that re-assigning the area would avoid duplication of facilities misses the mark, since the statute targets only the *unnecessary* duplication of facilities,⁶ since minor and isolated incidents of duplication are unavoidable in any multi-utility environment, and since it is the City's as-yet-unbuilt facilities that would be duplicating those already built and deployed by the cooperative.

⁵ See Minn. Stat. § 216B.04 (1988), requiring public utilities to provide service within 90 days of any application for service.

⁶ Minn. Stat. § 216B.37.

Finally, the argument that an unspecified number of residents of Mary Ann Drive have requested City service does not tilt the balance in the City's favor. The broad public interest in service area stability must take priority over customer preference; it is only when other factors weigh in favor of a service area change that customer preference becomes an important factor in the equation.

For all the reasons set forth above, the Commission will deny the City's request to transfer the Mary Ann Drive portion of Lake Country's assigned service area to the City.

NOTICE AND ORDER FOR HEARING

I. Jurisdiction and Referral for Contested Case Proceedings

The Commission has jurisdiction over assigned service area disputes under Minn. Stat. §§ 216B.37-.44. The Commission has jurisdiction to determine compensation for municipal utility acquisitions of other utilities' service territories under Minn. Stat. § 216B.44.

The Commission finds that it cannot determine, on the basis of the record before it, the amount of compensation due Lake Country Power for service rights to the two annexed areas. That determination turns on specific facts that are best developed in formal evidentiary proceedings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

II. Issues to be Addressed

Minn. Stat. § 216B.44 requires consideration of the following factors in determining compensation in municipal acquisition cases: the original cost of any property acquired by the municipality, depreciation on such property, loss of revenue by the displaced utility, expenses resulting from integration of facilities, and other appropriate factors.

The parties shall address the above issues in the course of contested case proceedings.

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Stuart Mitchell, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 296-8662; or Cassandra O'Hern, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 282-5725.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Lake Country Power, the Grand Rapids Public Utilities Commission, and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference, which may be conducted by telephone, will be scheduled by the Administrative Law Judge. The Office of Administrative Hearings will notify all parties of its time, date, and place.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission rejects the request to transfer to the Grand Rapids Public Utilities Commission the portion of Lake Country Power's service area that lies within the city limits of La Prairie.

2. The Commission hereby refers the issue of compensation for service rights to the two annexed areas to the Office of Administrative Hearings for contested case proceedings, as set forth above.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), (651) 297-1200 (TTY), or 1-800-627-3529 (TTY relay service).

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of the Grand
Rapids Public Utilities Commission to Extend
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MPUC Docket No. E-243, 106/SA-03-896

OAH Docket No.

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Allan W. Klein, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____